

14471
JWBloj

1

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - - x
IN THE MATTER OF: : Docket Number
HYDRO LICENSING STATUS WORKSHOP 2003 : AD04-1-000
- - - - - x

Commission Meeting Room
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC

Thursday, December 11, 2003

The above-entitled matter came on for status workshop,
pursuant to notice at 10:05 a.m.

REPORTED BY:

JANE W. BEACH

14471
JWBloj

2

APPEARANCES:

PAT WOOD, III, CHAIRMAN PRESIDING
COMMISSIONER NORA MEAD BROWNELL
COMMISSIONER JOSEPH T. KELLIHER

STAFF:

MARK ROBINSON
KRISTINA NYGAARD
JOHN KATZ
MARK PAWLOWSKI
NICK JAYJACK
ANN MILES
LON CROW

PARTICIPANTS:

KEVEN WEBB, Ridgewood Maine Hydro
KENNETH KIMBALL, Appalachian Mountain Club
FRANK DUNLAP, FPL Energy Maine
MIKE HOOVER, FPL Energy Maine Hydro LLC
ANDREW CADOT, Attorney representing Maine Rivers
NAOMI SCHULITE, Maine Rivers
MATT MANAHAN, Great Lakes Hydro
KEVEN BERNIER, Great Lakes Hydro
JOHN WITTAKER, Maine PPL
JUDY STOLFO, Interior - U.S. Fish and Wildlife

14471
JWBloj

3

APPEARANCES CONTINUED:

KIM OWENS, Interior -BIA

BELLA SWEELL, Interior - BIA

ANDREW TITTLER, Interior - BIA

BRUCE CARPENTER, New York Rivers United

WILLIAM LITTLE, New York DEC

MARK STANZA, New York DEC

JERRY SABATTIS, Erie Boulevard

BILL SCHOLLENGERGER, NY State Canal Corporation

JEFFERY CUETO, VT Dept of Environmental Conservation

KELLY LOWRY, Vermont Natural Resources Council

LAURA NORLANDER, California Hydropower Reform
Coalition

NINO MASCOLO, Southern California Edison

BOB HAWKINS, U.S. Forest Service

LAURA NORLANDER, California Hydropower Reform
Coalition

JOHN PRESCOTT, Idaho Power

JIM TUCKER, Idaho Power

SARA EDDY, Idaho Rivers United

HARRIETT HENSLEY, Idaho Attorney General

JAY CARRIER, PacifiCorp

POLY ZIMM, Washington Dept of Ecology

BILL FRYMIRE, Attorney General of Washington

CARL DUGGER, Washington Dept of Fish and Wildlife

14471
JWBloj

4

APPEARANCES CONTINUED:

LLOYD PERNELA, Puget Sound Energy

CONNIE FREELAND, Puget Sound Energy

PAMELA KRUEGER, Puget Sound Energy

POLLY ZIMM, Washington Dept of Ecology

BILL FRYMIRE, Attorney General of Washington

PHIL SMITHERS, Arizona Public Service Company

KARILEE RAMALEY, Arizona Public Service Company

GARRISH WILLIS, U.S. Forest Service

SHUALA HEDWALL, U.S. Fish and Wildlife Service

PAM SPOHHOLTZ, U.S. Fish and Wildlife Service

14471
JWBloj

5

P R O C E E D I N G S

10:05 a.m.

CHAIRMAN WOOD: The Federal Energy Regulatory Commission will come to order to consider the matters which have been posted for this time and place.

Before we start, please join me in a pledge to our flag.

(The Pledge of Allegiance was recited.)

CHAIRMAN WOOD: It's a little anemic.

(Laughter.)

CHAIRMAN WOOD: I'll just say everybody's in their pre-holiday stupor.

All right, I'd like to welcome folks joining us by remote and the folks here today. This is our third Hydro Licensing Status Workshop. It's our annual year-end affair here at the Commission.

At today's workshop we will be examining the unresolved issues associated with 21 hydro cases that have been before the Commission for five years or more in order to determine the best course of action to resolve or remove obstacles to final Commission action on these dockets.

I am pleased to report that, since last year's workshop, we issued licenses for 21 of the 37 cases that were discussed during the '02 workshop. My sincere thanks to our staff and to the cooperating agencies at the state and federal

14471
JWBloj

6

level that helped remove the obstacles to make that final action possible.

I should note that two years ago that number was 51 licenses that we were looking at that were over five years.

Since last year's workshop we have added five new cases to the list thus bringing to the total 21 hydro cases that have been pending before the Commission for five years or more.

Before we go further I would like to say that, in highlighting cases that are five years or older, I hope that I have not inadvertently sent a message that cases before the Commission's processing times of three to four years are somehow acceptable. Nothing could be further than the truth -- and so for next year we will actually drop the bar back to three years or older cases. That would not have today added 19 cases to the list.

In fact, our goal is to process hydro license applications, all of them, within the two years of filing so that a new license is issued before the current license expires, thus precluding the need to do annual licenses.

To help us accomplish this goal as many of you know, we recently completed a rulemaking process in order in 2002 that put into place new hydro licensing regulations which are designed to instill discipline, structure and efficiency into the process.

We are internally reviewing our process -- resource

14471
JWBloj

7

allocation within the agency, to get the average processing time for after filing here at the Commission well below the two years in fact.

One of the underlying principles of this new integrated licensing process is to engage process participants including staff, state and federal resource agencies, Native American Tribes and the public, much earlier in the process to identify informational needs necessary to complete a license application.

Having said that though we still have the traditional and the alternative licensing processes that will be the focus I believe of all the applications here today and we want to encourage participants in those processes to adhere to this important principle so that regardless of whatever licensing process is use, agencies and Tribes involved in the process will be able to complete their statutory responsibilities in a timely manner thus avoiding many of the obstacles to timely license issuance that we will be discussing today.

I should add that honestly we are probably the only party that has an institutional interest in moving these applications along, or relicenses where there is an existing facility, you know, extending on an annual license as not harmful adjoining to the applicant and some of the parties may not have the strongest incentive to go ahead and get the closure but we do and we will and we will continue to ride on this

14471
JWBloj

process within our statutory responsibilities to get the necessary answers and the necessary documents and the necessary decisions made so that these licenses can be issued in an on-time and I should say under budget -- but we'll work on that part.

I do look forward to the eventual migration to the integrated licensing process so that we can deliver on our promise of a less expensive more streamlined more collaborative process.

But we are where we are today and we've got I think the morning split into half -- we will do this time zone applications now and then we'll pick up with the Western folks at 11:30 Eastern time.

So with no further ado, if any of my colleagues want to add anything to that mix, just jump right in.

COMMISSIONER KELLIHER: I just want to commend you for holding these meetings. I think it was a great idea to start this process and I've been watching them on television for two years and I'd be glad to participate at this time.

CHAIRMAN WOOD: We got two years' worth of pent up questions pop out. It was, as we have previously recently gone through the confirmation process that was one of the issues that a number of the Senators raised with me and I just concluded quite frankly nothing is a better disinfectant than sunshine so this is a little pre-packaged sunshine but sunshine nonetheless.

14471
JWBloj

9

So I hope it helps and really our goal is not to just -- hector and you know bang on folks that haven't gotten their issues dealt with but to find out what information we can provide, the licensees can provide, the agencies can provide or some other person can provide, to allow decisions to be made and that's really what the focus of my questions will be today as what can we do to help get this thing to closure and what needs to happen and -- who in this room are on the phone or patched in by the video -- answer some of these questions.

I would like to add for the purpose of the fact that we are connected here by distance camera to other locations, if as we go forward through the day people could just even if it becomes mind numbingly repetitive, identify yourself before you speak and that can help those who are participating from a distance to be fully enfranchised here.

So John?

MR. KATZ: Thank you Mr. Chairman. Welcome to the workshop. My name is John Katz. I'm going to be moderating today.

As Pat mentioned, we have promised the folks in the West that we are not going to start those projects in their area until 11:30 a.m. so if we do get done with the Eastern half of our session before 11:30 we'll take a break and we'll not go right into those sessions.

Again, as Pat said, we have folks who are connected

14471
JWBloj

10

by telephone and teleconference. We also have folks in the room with microphones and if anyone speaks here please make sure you grab a microphone and identify yourself. The same is also true for those who are calling in. Otherwise the court reporter will not know how to preserve your statements for the ages. So identify yourselves and for those who are here, use mikes.

The facilities people have asked us to pass on that there is only water allowed in this room so please don't bring anything else to eat or drink.

In terms of what we're going to cover today, as the Chairman said, we're trying to identify roadblocks to processing the cases in question and determine ways that we can move forward.

At the same time we're not going to be debating substantive issues, so if someone is concerned about -- just a level of minimum flows for example we are not going to try to resolve that today.

Rather, if the question is 'how can we come together to figure out issues to get permits that need to be issued, have staff do something, that's the kind of thing that we're going to discuss.

So I will be enforcing that possibly subtle but important distinction as we go along.

With that I am going to turn things over to Mike Pawlowski -- and I guess before Mike starts, folks are out there

14471
JWBloj

11

-- we can hear somebody having a very good time on the mikes --
so if you want to participate with comments, that's helpful.
Otherwise turn it down a little, please.

MR. PAWLOWSKI: Thank you, John.

Two years ago, Chairman Wood and the Commission initiated the concept of hydro licensing status workshops as a way for involved agencies, applicants and other stakeholders to identify and work to resolve roadblocks to Commission action on long-pending license applications.

In some cases the Commission staff had yet to complete the NEPA process. In some cases the Commission could not proceed further without an application until the project proposal received requisite authorizations from other agencies.

For example, some proposals were waiting for state water quality certification or state concurrence of an applicant's certification of a project's consistency with a state coastal zone management program.

In yet other cases parties might be awaiting a Commission Endangered Species Act biological assessment or a biological opinion from NOAA fisheries or the U.S. Fish and Wildlife service.

While all recognize that the many demands on both state and federal agencies made inevitable a degree of delay and agency action on components of the licensing process, the goal of the workshops has been to focus attention on the oldest cases

14471
JWBloj

12

and find ways to remove obstacles to final actin on each.

The first licensing status workshop was held on December 10 and 11, 2001. At that time there were 51 projects that had been at the Commission for five years or more. As a result of the first workshop, staff and state and federal agencies committed to work together to remove obstacles in an effort to resolve issues surrounding some of the oldest hydro licensing cases at the Commission.

Toward that end, Staff initiated a series of regional workshops with state water quality and coastal zone management agencies to determine how to best integrate the state's water quality certification and coastal zone management processes with the Commission's relicensing processes.

These efforts and others are helping to make progress at reducing the number of five year and older cases.

At the 2002 workshop, the number of five year and older cases had been pared down to 37 projects. At today's workshop, our third, we are addressing 21 projects where license applications have been pending at the Commission for five years or more.

Five are new to the list and 16 projects remain from last year's workshop. The projects are located in seven different states and we will be presenting the projects by state beginning in the East and concluding with the West.

In the State of Maine we will be discussing five

14471
JWBloj

13

projects. The first project is the Burnham project, number 11472. It is a one megawatt project located on the Sebasticook River. The project application was filed in 1994 and it is an unlicensed operating project.

Since the November 2002 workshop, the Maine legislature clarified state water quality standards to clarify that dissolved oxygen concentrations in riverine impoundments are to be measured above the point of stratification.

What remains is the issuance of a water quality certificate by the State of Maine.

CHAIRMAN WOOD: I remember talking about this last year, "above the point of stratification" -- I notice that from some of the other projects that we already know which way that's going to come out -- do we know that from tests on the Burnham Project whether the DL level that is now the statutory location is within the statutory parameters or not?

MR. PAWLOWSKI: I believe that that is the case, yes, that the project will now maintain state water quality standards.

CHAIRMAN WOOD: What were the other considerations by the legislature for where to measure that? Was that an issue or has the DEP always promoted this location for the measurement?

MR. PAWLOWSKI: My understanding is that the original interpretation had been that riverine impoundments needed to meet dissolved oxygen standards from surface to the bottom of

14471
JWBloj

14

the impoundment. In many cases that's not possible and the legislature clarified that, in riverine impoundments that was not to be the case.

MR. WEBB: Good morning, this is Kevin Webb with CHI operations on behalf of the applicants. I just want to confirm that Mr. Pawlowski's interpretation of the Maine legislative action is correct and I've discussed this point with Mr. Mirchiss of Maine DEP several times and he's assured me that the new legislature will allow the DEP to write a water quality certification for this project.

CHAIRMAN WOOD: Okay, so we're looking for a WQC by first of the year, first part of the year.

MR. PAWLOWSKI: Yes, my understanding is that the project applicant withdrew and refiled this request for water quality certification in February of this year and therefore the Maine DEP in order to meet the one year cut off would have to issue certification in February 2004.

CHAIRMAN WOOD: And is anyone here on the phone from the DEP?

Mr. Webb, do you know of any obstacles that exist between your getting that or any obstacles that exist for you getting that WQC by February?

MR. WEBB: Not that I am aware of. In fact, I had expected a draft to be issued by now and apparently Mr. Murchiss has fallen behind schedule. He's unfortunately one person

14471
JWBloj

15

wearing many hats up there and it's short staffed, so I know that that's part of the issue up there at DEP.

MR. TITLER: Andrew Titler, Department of the Interior.

The Burnham Projects is one of the projects covered by the KHDG agreement which covers -- which actually resolves in fact to our satisfaction and to I hope the licensees' and everyone else's as well -- all the issues which were -- which surrounded all the projects on the Seabasticook and the Kennebeck as well and we hope that that remains resolved, but the Commission's behavior in the Fort Halifax Project has rendered that dubious because the Commission has taken actions which lead us to doubt whether they're going to fully back up that settlement agreement. We hope that they do the right thing and back up the settlement agreement that we have had and we have signed with the licensee and we relied on and others have relied on for some time.

CHAIRMAN WOOD: I'm sorry, is the Burnham Project in that river basin?

MR. TITLER: Yes.

CHAIRMAN WOOD: And your programmatic agreement covers all that? It covers --

MR. TITLER: The KHDG agreement is a settlement agreement between the states, between federal agencies and a large number of licensees actually up and down the basin signed

14471
JWBloj

16

ancillary to the Edwards Dam Removal Agreement back in '94.

One of the projects is the Fort Halifax Project and the licensee submitted an application to remove the dam consistent with the settlement agreement and the Commission has so far refused to act on it and has said things and sort of done things that have led us to question the Commission's commitment to the settlement agreement.

CHAIRMAN WOOD: We will enforce that document in accordance with the law. Is there an outstanding federal agency issue then on this application other than the states activities? What happens once the state WQC is done here at the Commission? Is that the last thing remaining?

MR. PAWLOWSKI: Yes sir. We will be able to proceed with preparing an order.

CHAIRMAN WOOD: Okay. Any question for them? Anybody else?

COMMISSIONER KELLIHER: One question -- why did the legislature act? Was it solely because of the hydro project relicensings or were there other issues?

MR. PAWLOWSKI: Yes. There, with the class of '93, the main DEP and I don't mean to be putting words into their mouth, this is my understanding, the main DEP realized that there was some elements of their water quality standards that needed clarification, particularly the point of measurements for dissolved oxygen concentrations and as you will see in future

14471
JWBloj

17

cases here today there were some issues related to draw down of reservoirs, storage reservoirs, for hydro power purposes or for water quality purposes.

COMMISSIONER KELLIHER: The Legislation wasn't enacted over the objections of Maine DEP? It was something they were worried about?

MR. PAWLOWSKI: My understanding is that, yes, the DEP needed that clarification from the legislature.

MR. WEBB: This is Kevin Webb, just to provide a little bit of history here. DEP originally tried to do this merely through a rulemaking and concluded after several attempts on that that the legislature needed to do it, that they could not handle it internally within their own rulemaking process and that's what brought the legislature into it.

There were two bills that were presented to the legislature, eventually that came around to one bill that was finally passed that met everybody's needs and the bill addressed Burnham as well as several other projects.

(Pause.)

COMMISSIONER KELLIHER: Thank you.

MR. WEBB: You're welcome.

MR. PAWLOWSKI: Are there any other questions further comments?

(No response.)

MR. PAWLOWSKI: The next project is the Gulf Island

14471
JWBloj

18

Deer Rips Project number 2283. It is a 31 megawatt project located on the Anderscoggen River. The application was filed in 1991 and this is a relicense application filed since the November 2002 workshop.

As we discussed previously the main legislature clarifies dissolved oxygen standards for riverine impoundments. However, in this case, that clarification did not cure the problem for this project because substandard DO concentrations occur above the point of stratification in Gulf Island impoundments. Therefore, as allowed under the state standards, the Maine DEP initiated a process to develop a site-specific dissolved oxygen criterion for the impoundment and, again, we are awaiting a water quality certification from the Maine Department of Environmental Protection.

Are there any question.

CHAIRMAN WOOD: What is the process that the Maine DEP has to go through in order to do a waiver of that standard?

MR. PAWLOWSKI: I believe that they have to do a site specific analysis. I'm not sure exactly what that entails.

CHAIRMAN WOOD: And then based on that, is the EPA involved?

MR. PAWLOWSKI: The EPA, they would have to submit that proposal to the EPA for their approval. My understanding is that the EPA may not act on it or the EPA may act on it and decide that they need to take action. If that's the case then

14471
JWBloj

19

it could be approximately six more months since, from the time that the DEP submitted their proposal, their proposed criteria, to the Environmental Protection Agency.

CHAIRMAN WOOD: And do we know if that submittal has already happened?

MR. PAWLOWSKI: Our understanding is that it is due to occur this month.

CHAIRMAN WOOD: Is there anyone from the project on the phone?

MR. HOOVER: Yes, hi. This is Mike Hoover with FPL Energy. I'm the project manager for the relicensing of the Gulf Island Pond Project.

To give you a little bit more information, we have been working diligently with the DEP since this legislation was passed in order to be able to satisfy the requirements for dissolved oxygen in the Gulf Island Pond and, as a result of the process that we've been going through, the latest work has shown that, with some improvements in the treatment of point sources as well as possibly some improvements to diffusers in the pond itself that elevate the oxygen levels. There may be a possibility that we will not have to address the site-specific criteria for Gulf Island Pond and that we will be able to meet the standards for the state water quality criteria that were passed by the legislature.

So the DEP's hope is to be able to have Gulf Island

14471
JWBloj

20

Pond come into compliance with the statewide standard and that will in turn I think allow the process to be expedited because there would be no subsequent need for approval from EPA for the site-specific standard.

MR. PAWLOWSKI: And when do you expect the determination to be made as to whether this is going to work out?

MR. HOOVER: That determination should come within the next two to three months.

MR. PAWLOWSKI: Good, thank you.

Are there any other comments or questions regarding this project?

(No response.)

MR. PAWLOWSKI: Thank you very much.

Our next project is the Flagstaff Project, number 2612. There are no generating facilities associated with this project and it is located on the Dead River. The application was filed in 1995 and it is a relicensing.

Since the November 2002 workshop the Maine legislature passed a resolution clarifying issues related to storage reservoir draw down. The Maine DEP issued a water quality certificate on November 14, 2003, and we are in the process of preparing an order on the application.

CHAIRMAN WOOD: So there's no further items needed other than that?

14471
JWBloj

21

MR. PAWLOWSKI: No Mr. Chairman.

CHAIRMAN WOOD: Okay, we'll get that one up.

MR. KIMBALL: This is Kenneth Kimball -- and actually there is a timely appeal that has been filed on the 401 that was issued for the Flagstaff project.

CHAIRMAN WOOD: What's the process on that?

MR. KIMBALL: Essentially on the appeal that has come in, challenges DEP's decision that it does not actually meet water quality standards. I think it also challenges the fact that even though the Maine legislative body passed the legislation that was just discussed, it still needs to go through formal approval with EPA which it has not yet -- and the appeal basically is requiring or requesting that the DEP go through a UAA if it's going to proceed ahead with the conditions that it put forward and I believe that there is some question even from the Maine Attorney-General as to whether the 401 that was issued is legal and I think EPA has some serious considerations as well.

CHAIRMAN WOOD: And so your interest in that is?

MR. KIMBALL: Actually, what we would request is for that appeal process to be finished before the license was issued.

CHAIRMAN WOOD: And the implication of that for the dam is that the dam just stays there but without a license?

MR. KIMBALL: The implication in the appeal is filed

14471
JWBloj

22

on the amount of winter draw down relative to impacts upon the littoral zone.

CHAIRMAN WOOD: Okay. The question for our staff is what?

MR. KIMBALL: I believe the staff has been notified that that appeal has been filed.

CHAIRMAN WOOD: What has our process been if there is an appeal of a state issue like a license issue certificate?

MR. PAWLOWSKI: Unless there is a provision in state law or other action that stays the 401, if it's appealed there is no reason why we have to delay action. That would be a matter of policy, the call would be if we chose to or not.

CHAIRMAN WOOD: Sir, Mr. Kimball? What is the time frame for action at the state level for your appeal?

MR. KIMBALL: We're hopeful that it will show up either in the February or the March review process for the Department of Environmental Protection.

CHAIRMAN WOOD: The appeal is at the department or at the state court?

MR. KIMBALL: The appeal right now is with the commission actually that oversees the department.

CHAIRMAN WOOD: Okay.

MR. DUNLAP: Good morning, Mr. Chairman, my name is Frank Dunlap. I'm with FPL Energy.

Ken is correct in that an appeal has been filed. I'm

14471
JWBloj

23

the project manager for Flagstaff. Mark is proper in his observation that the appeal does not stay for one certification and so the board for environmental protection will just simply need to consider whether the appeal is appropriate and whether they want to process it and so on.

So that appeal process in the State of Maine does not have a statutory deadline or time frame in which they need to act.

As far as the EPA is concerned, yes they have voiced some concerns to Flagstaff over the years. Their process -- well, there isn't actually a process before them. They have the resolve that was passed which discussed the treatment of water storage reservoirs in the State of Maine. However that didn't change -- that resolve did not change any statutes or change any water quality standards so there's some question as to whether they need or should be taking action on the resolve.

I think that pretty much summarizes where we are on that.

MR. KATZ: Mr. Kimball, this is John Katz. I don't believe you gave your organizational affiliation for the record, if you could do that.

MR. KIMBALL: Yes, with the Appalachian Mountain Club.

MR. KATZ: Thank you.

CHAIRMAN WOOD: Is EPA approval required basically

14471
JWBloj

24

for the statutorily defined program for water quality in Maine?

MR. DUNLAP: Yes and they've gone over the years, as each statute or regulation is passed, they do review and comment on those so the program as a whole, yes, has been reviewed. They are reviewing at this time and have not committed exactly when their comments will be, all of the statutes that were passed in the past session.

They have the resolve but again the purpose of EPA review is to see that statutes and regulations that have been passed conform to their requirements.

In this case, a resolve was passed that affects both Flagstaff and a number of other reservoirs which simply directed the Department of Environmental Protection to consider existing statutes and to not be applying policies that have not gone to the rulemaking process. That's the core issue on this resolve.

The resolve itself did not change any statutes or regulations or add any statutes or regulations. So all that to say that there's no change for the EPA to review.

CHAIRMAN WOOD: Okay, thank you.

MR. DUNLAP: Thank you, sir.

MS. KELLY: Mr. Chairman, staff and participants, I want to thank you for having this proceeding. I unfortunately have only been able to be here for about a half hour and I have to leave to join another meeting. But my advisor, Michael Krauthammer, is with me and will stay for the proceeding and

14471
JWBloj

25

it's been helpful just to get an idea of the format and to hear that there is a very frank exchange of views that I think will be valuable to moving these cases along and certainly been beneficial to me.

CHAIRMAN WOOD: Thank you.

MR. BENNETT: Mr. Chairman, this is Nick Bennett. I am the staff scientist with the National Resources Council of Maine.

CHAIRMAN WOOD: Yes, please.

MR. BENNETT: I just want to comment on a couple of -
- am I audible?

CHAIRMAN WOOD: Yes, very.

(Laughter.)

MR. BENNETT: Okay, thank you.

I just want to comment on a couple of the comments that Mr. Dunlap made. My understanding is that EPA and the Attorney-General's office in Maine has taken the position that the resolve that he referred to must be approved by EPA -- that is certainly that EPA has taken and, in fact, in the 401 certification that the state issued, there was no reference made to that resolve for the very reason that EPA had not yet reviewed or commented or approved on it or disapproved on it.

It should be noted that a similar piece of legislation was passed in the early '90s changing -- water quality status for the Flagstaff Lake and a number of other

14471
JWBloj

26

storage reservoirs in Maine.

When that was passed by the legislature it was subsequently overturned by EPA. We believe this is a very similar piece of legislation. We don't believe that it has standing. We don't believe that it will survive the review by EPA and we do believe that the 401 certification as issued is a violation of Maine's water quality laws and so along with the Appalachian Mountain Club we too have appealed the 401 certification for Flagstaff and would request that the Commission not act on that license until the appeal issues have been resolved. Thank you.

MR. KATZ: I think we can take it from that that there are some interesting legal issues to be developed in the State of Maine and we will watch as that happens. Mark?

MR. PAWLOWSKI: Thank you, John.

The fourth project is the storage project number 2634. Again, there are no generating facilities located here. The project is on the Penobscot River and this is also a relicense. The project is new to this list. An FEA was issued in June. The final environmental assessment was issued in June 2002. Endangered species consultation has been completed and that was done in August 2002. The water quality certification request was withdrawn and refiled in January 2003. Staff has issued a letter requesting a schedule for filing a settlement agreement among the stakeholders. The applicant filed a

14471
JWBloj

27

response on November 28, 2003, indicating that a settlement will be filed in April 2004 and the water quality certificate would be issued shortly thereafter.

Again, we are awaiting a 401 certificate from the Maine DEP. Are there any questions?

CHAIRMAN WOOD: Is anyone here from the project administration?

MR. MANAHAN: This is Matt Manahan, outside counsel for Great Lakes Hydro America.

CHAIRMAN WOOD: What issues are holding up the WQC at the state?

MR. MANAHAN: All the DEP is waiting for is the outcome of the settlement discussions. The settlement is going quite well and as the letter we filed two weeks ago noted we are on schedule for hopefully reaching a final settlement by April 1, 2004.

Once we do the DEP will then proceed hopefully to issue expeditiously the 401 water quality certification.

CHAIRMAN WOOD: Anything we can offer to facilitate the settlement?

MR. MANAHAN: Well, we are hopeful that a member of the staff from the Commission will participate in a discussion of the draft settlement offer which will take place on December 9, 2004, and we understand from the project manager that he or someone from the Commission staff does plan to attend that

14471
JWBloj

28

meeting and that would be very helpful.

CHAIRMAN WOOD: Okay, we will do that.

MR. BURNIER: This is Kevin Burnier from Great Lakes
Hydro --

MR. KATZ: Matt -- sorry to interrupt. This is John
Katz. I'm not sure I follow that. You said there was a
discussion on the settlement to be had on December 9, 2004?

MR. MANAHAN: I'm sorry meant January 9. If I said
December it was in error -- January 9.

MR. KATZ: Okay, thank you. That clears it up.

MS. MILES: Whom do we have on that from our staff?

MR. PAWLOWSKI: The project coordinator is John
Costello and John, you're on schedule to be there at that
discussion?

MR. COSTELLO: Yes. One of us will go up there.

MR. KIMBALL: This is Kenneth Kimball, Mountain Club.
We're actually a party to that settlement agreement and we would
like to just support what Matt just put forward.

CHAIRMAN WOOD: Okay, great. All right, we'll hear
how that goes after -- well actually we probably won't because
it's settlement discussions. We will hope to hear something
soon. By April at the latest?

MR. KIMBALL: Hopefully by April 1.

MR. PAWLOWSKI: Right, thank you.

The last project in the State of Maine that we will

14471
JWBloj

29

be discussing is the Howland Project, number 2721. It's a 1.9 megawatt project located on the Penobscot River. The application was filed in 1998. This project is new to the list and recent activities include staff's issuance of a ready for environmental analysis notice with comments due on October 7, 2003.

On August 29, 2003, the applicant requested that non decisional staff be assigned to assist the stakeholders in negotiating a settlement agreement. Non decisional staff was assigned to the project on September 11, 2003, and settlement discussions are continuing.

The applicant asked for a suspension of processing until April 2004 when a settlement agreement would be filed. And that request was recently granted.

When the resettlement was filed we will still have to proceed with our NEPA scoping process, conduct our environmental analysis, execute a programmatic agreement, complete endangered species consultation, and receive a water quality certificate from the State of Maine prior to the issuance of an order.

CHAIRMAN WOOD: So what happened between '98 and '03 on this license? There's a lot of activity now. I just wonder why or what caused things to not get dealt with when they're filed?

MR. LEE: Mr. Chairman, Jeff Lee.

CHAIRMAN WOOD: Go ahead.

14471
JWBloj

30

MR. LEE: I'd like to say that the processing of that was delayed because of water quality being withdrawn and we filed since 1998.

MS. MILES: One other thing. Ann Miles. There had been ongoing settlement discussions for quite a while and I think a decision was made prior to your tenure here to give some time for that to occur and perhaps there were other -- I think there were others here who were involved on that project that might have some information on that for the background.

MR. WHITAKER: John Whitaker representing PPL Maine. Over the years we've gone through extensive settlement discussions with all the parties and eventually it took us to our draft settlement agreements which are conceptual settlement agreements which we file with the Commission in October.

So we're pretty much there. We have all the details to work out, all the applications that we have to file with the Commission, we have to get all those together and we expect to get that done in April 2004.

CHAIRMAN WOOD: For real? You're going to get them in in April of '04?

MR. WHITAKER: Definitely Mr. Chairman.

CHAIRMAN WOOD: Other than the participation of our non decisional employee in that effort, is there anything we can do to facilitate this settlement?

MR. WHITAKER: Well, you've done that already by

14471
JWBloj

31

granting our extension, our request to suspend things through April. So that gives us the time to go do our outreach meetings which we've done and have meetings on the modified fish rate prescriptions that are going to be proposed for the project and that gives us time to finalize settlement agreements and the various license amendment applications that we have to put together by April.

So you've done what we need for you to do to facilitate the finalization of this process and our filing of the applications in April. And we certainly appreciate the extension grant in this case. Thanks.

MR. ROBINSON: Mr. Chairman, what we did in September was a continuation of the same process that we've been in for the previous three or four years where we were granting extensions and withholding FERC action to allow the parties in a very complicated settlement to this basin to look at all those projects to include this one.

So we just continue to support the settlement agreements up there and have done that for a number of years.

CHAIRMAN WOOD: So this is one of the more outlyers, one of the ones that are more contemporaneous what may have been filed in this on the Penob -- or is it a different river?

MR. ROBINSON: I can't pronounce it.

MS. MILES: This is the Penobscot Basin.

CHAIRMAN WOOD: So it's part of that broad --

14471
JWBloj

32

MS. MILES: So it's part of that whole group of projects where there's been an agreement where there's many, many stakeholders. I think a majority of all the stakeholders that interested in this basin that have -- they're recommending some increasing capacity at certain projects and some fish passage and dam removal at others.

So it's been an ongoing settlement for a number of years to try to pull all these things together and it has affected a couple of our licenses and some rehearings and some ongoing amendments.

So there's been a general decision to hold off on that action and give some time to see if this can be completed.

CHAIRMAN WOOD: Sounds worthwhile.

As a general matter, though, it sure would help if we would have settlement discussions. This one I understand is unique because of the interrelatedness. But if those could happen during the two year pendency here at the Commission prior to the expiration of the old license, that would be -- those are welcome without reservation.

When we get beyond the date of the expiration of the prior license status I for one have problems with continuing. This one I remember we talked about kind of as part of a package and it seemed to make a lot of sense to do it that way.

So thanks for the reminder.

MR. DIAMOND: David Diamond for the Department of

14471
JWBloj

33

Interior. The Department commends the Commission for continuing these annual workshops and shares the Commission's interest in processing licenses on time pursuant to the President's national energy policy.

And in this particular case, the Secretary of the Interior has called this settlement "a win for all involved." And a case that fits with her vision of cooperative conservation to be emulated in other river basins nationwide. You have a lot of other multiple interests and uses in this river and the packaging of all the parties in a settlement agreement allows resolution of longstanding disputes and avoiding future uncertainties.

CHAIRMAN WOOD: Is there any way this, as it has been going forward, that we could put similar time lengths, time frames, on these ones in the same area where they, like 40 years from now when the Commission is dealing with the relicensing issues that they're all here at the same time anyway?

MR. ROBINSON: That is one of the considerations that the Commission makes in issuing the time frames for the licensing. We try to match them up as much as possible -- we do have the legislative constraints on our flexibility on how many years we can issue a license for but we did take a look at that and tried to make a matchup so that our grandchildren in having a more cogent platter put in front of them.

MR. FALLEN: Mr. Chairman, Andrew Fallen from

14471
JWBloj

34

American Rivers.

You beat me to the punch which seems to be a thing
you do a lot.

(Laughter.)

MR. FALLEN: But yes, I was going to comment that
integrating license expiration dates throughout a basin I think
is one of the things that can be most helpful when trying to
develop creative solutions and I think that's what the
Commission is driving to do a lot in its work balanced against
the need to get things done in a timely manner.

Unfortunately the past, we kind of have to live with
the past history of -- these fairly fragmented expiration dates.
But being able to integrate all of these licenses allows us to
have solutions like we've had in the Penobscot River Basin where
we hope to actually increase generation in a lot of facilities
and, at the same time, enhance fisheries habitat restoration in
a way that is almost unprecedented I think.

MR. KATZ: Mr Chairman, you should know that, within
the course of our discussions with our fellow federal agencies,
as well as with other stakeholders, the subject has come up and
there's pretty much a unanimity of opinion, uniformity of
opinion, that everyone agrees that to the extent we keep things
in a basin on the same time frame that's a good thing to do.

MS. NYGAARD: And that has been in effect Commission
policy for 35 or 40 years.

14471
JWBloj

35

MS. OWEN: Kim Owen, Department of the Interior. I'd like to echo the comments of David Diamond and Andrew Fallen and express the Department's thanks to the Commission and Commission staff for their patience with us while we negotiated this complex settlement agreement and particularly granting the six month extension until next April.

As one of the folks who worked hard negotiating and drafting the documents on this settlement, I can state that, having the ability to work on finalizing the settlement while not having to make filings and respond to filings in the ongoing proceeding at the same time, greatly facilitates our ability to bring these types of agreements to closure.

I've worked closely with Secretary Norton's office on this agreement and I can convey her strong support for this settlement and can assure the Chairman that the parties are working hard to finalize the settlement agreement and bring it to the Commission for action in April. Thank you.

MR. PAWLOWSKI: Great, thank you, Ms. Owen.

CHAIRMAN WOOD: Once we get something in April then - - we'll probably see this on next year's list though because there's an amount of post-settlement work that's involved, NEPA review -- you mentioned -- it'll be close.

Yes? Okay. I just want to set my expectations right.

MR. PAWLOWSKI: Okay, Maine it is. The next two

14471
JWBloj

36

projects are located in the State -- there we go -- we seem to have lost the -- well, why don't we move ahead to the State of New York whether or not the facilities are willing to do that?

The next two projects are located in the State of New York. The first project is the Oswego River Project number 2474. It is an 18 megawatt project located on the Oswego River. This is the eighth in a series of nine class of '93 projects in the State of New York for which settlement agreements have or will be filed.

The Commission's dispute resolution service is assisting the stakeholders in their negotiations and we are awaiting the New York DEC to issue a water quality certificate upon the conclusion of the settlement.

CHAIRMAN WOOD: So what's -- do we have the settlement in here yet or not?

MR. PAWLOWSKI: No, Mr. Chairman, the settlement agreement has not been filed yet. What brought this about was many projects had their request for 401 certificate denied by the state and which were appealed by the applicants and an administrative law judge with the state encouraged the parties to sit down in mediation and come to settlement agreements for issuance of a license on nine projects in the State of New York.

MR. ROBINSON: Is this the river project that was scheduled for all nine and proceeded one by one -- they would do one, finish it, then move to the next one.

14471
JWBloj

37

MR. PAWLOWSKI: Is the last in that schedule of projects?

MR. ROBINSON: The next one too.

CHAIRMAN WOOD: This is the second to last.

MR. PAWLOWSKI: Second to last, second to the last one --

CHAIRMAN WOOD: And the other one was the other certificate today.

There was a gentleman on the phone, I believe?

MR. KATZ: Bruce Carpenter, did we hear you speak up?

MR. CARPENTER: Yes, and I'm assuming that the applicant is on the call but I don't believe that that's currently what's holding up this project. This settlement has been signed. It may not have been forwarded to the Commission but there's another little bit of tweaking that has to be done back here and the applicant or DEC might want to chime in if they're on the phone.

CHAIRMAN WOOD: Is someone here from the applicant?

MR. SABATTIS: Mr. Chairman, I'm Jerry Sabattis. I'm hydro licensing coordinator for the applicant and I have recently corresponded with the Commission staff and have had discussions with the Commission staff who has been putting a lot of pressure on Erie -- Erie Boulevard, to conclude this settlement.

The settlement has been complicated by several

14471
JWBloj

38

significant factors. First of all, the developments of this project -- there are three developments in the Oswego River Project and there is another license affected by this settlement, the Oswego Falls Project number 5984, are all part of the New York State Barge Canal System that is owned and operated by the New York State Canal Corporation.

Consequently we do not own or operate the dams that are connected to our generating facilities and in connection with relicensing these projects, there is an ongoing objective of the U.S. Fish and Wildlife Service and other agencies to restore fish passage in the stretch of dams affected by these projects and in order to accommodate that goal, improvements and modifications to the state-owned barge canal dams would be required.

This is further complicated by the fact that these projects are only marginally economic so this series of factors has made resolution of a settlement very difficult and in the course of proceeding to negotiate a settlement, it was our objective to involve the New York State Canal Corporation and it was our goal to have the State Canal Corporation sign the settlement because of the fact that they owned the dams and modifications to their facilities would be required pursuant to the settlement and in order to do any work on their structures under their regulations the Canal Corporation has to issue a prerequisite canal work permit.

14471
JWBloj

39

The Canal Corporation has indicated that they would not oppose the settlement but they in turn also would not sign the settlement and they had further indicated that they would need to be compensated with appropriate easements for the use of their facilities in connection with our relicensing the projects.

And this agreement to compensate them gives us a dilemma in these respects. These projects are marginally economical and we are committing some millions of dollars of enhancements pursuant to the settlement and, if the easements that are sought by the Canal Corporation are of significant cost, we will face a financial dilemma.

In the context of an ensuing license pursuant to the settlement, if the agreement on payment for easement is deemed a prerequisite to granting any work permits to Erie to do the work, the modifications for fish passage and what not, we would face a dilemma in ability to comply with the license if we couldn't get the permit first.

And as I indicated earlier, your staff has been pressing us for a commitment. We committed to an answer today. We sought to meet with the Canal Corporation staff prior to this meeting that was -- we were unsuccessful in that endeavor and in order for us to proceed we face significant risk in that committing to a settlement that results in a license puts us in the throes of potentially having this financial implication

14471
JWBloj

40

after license issuance and the potential that we would need to go to the Commission and seek extension of implementation if we cannot resolve matters and get the permits necessary to do the work.

Nonetheless, after a lot of consideration over this difficult issue, we are committing hereby to sign and submit to settlement after we have undertaken the necessary internal reviews, corporately, to explain the risks involved.

So we are hereby announcing that we do intend to file this settlement and we're doing it on the hope that the risks that we perceive at this time will not be as adverse as we fear.

CHAIRMAN WOOD: I appreciate that very much.

Let me ask a question -- is the Canal Corporation appointed by the Governor? Or how is that set up? Is that a state agency or what?

MR. SABATTIS: The Canal Corporation is a corporation set up under the New York State Thruway Authority under intrastate canal law. I'm not intimately familiar with the statute but they are set up under state statute and I don't know if they're on the line or if the New York DEC may have a better explanation, but they are a state designated agency under state statute.

CHAIRMAN WOOD: Well, I mean all I can say is I've noted with some interest that Governor Pataki has been extremely aggressive about affordable renewables in the state portfolio of

14471
JWBloj

41

which I believe this would be a part, existing hydro -- so I just am asking the obvious question.

Is there politically accountable agencies where the guy at the top has a pretty strong agenda on renewable power and just wondered if that -- could factor in more directly to resolving your concerns -- I'll leave that all up to you to figure that out, but --

MR. SABATTIS: Perhaps it could and perhaps we will need to seek redress with the Commission later on when we have to deal with this matter.

CHAIRMAN WOOD: Thank you. Tell me, just if I could --

14471
JWBloj

42

Let me, if I could, impose on your charity a bit more. You said something about filing something. Do you have a probable date as to when that could be coming here?

MR. SABATTIS: Well, I have to caveat my response that we have to undertake internal corporate review of commitments that could have a significant financial impact to our company. So that's my caveat.

We will hereby file a letter indicating our intent to file the settlement as soon as practicable. Our experience in achieving this type of approval in past instances is one to three months.

CHAIRMAN WOOD: Okay.

MR. PAWLOWSKI: Thank you. Just to recap, we sort of moved on to discussing the School Street Project, which is the implication with the New York Canal Corporation.

We will now proceed to discuss three projects located in the State of Vermont.

MR. CROW: Mark, I think you skipped one, School Street is the next one.

MR. KATZ: School Street was subsumed in the discussion of Oswego.

MR. CARPENTER: This is Bruce Carpenter again. I don't think it's quite the same; is it, Jerry?

MR. PAWLOWSKI: The Oswego Project --

MR. SABATTIS: This is Jerry Sabattis again. Thank

14471
JWBloj

43

you.

Bruce is correct. The circumstances surrounding the School Street Project are quite different from the circumstances pertaining to the Oswego River Project.

The School Street Project is not implicated by the barge canal system, as I mentioned with the Oswego Project, but there are a number of complicating issues that are affecting our ability to continue to negotiate a settlement.

There are fisheries issues pertaining to two federal agencies that are seeking to mandate fish passage, and there is also an intent to restore instream flows at the Project.

There are aesthetic resources issues pertaining to the falls at the Project. There is recreation access in connection with the aesthetic resources, and complicating our ability to conclude these negotiations, there are cultural and historic issues.

This Project is located in parts of two Federal Register of Historic Districts and part of the facilities are also designated under the National Park Service as a National Historic Landmark. So any modification that we commit to undertake, pursuant to other aspects of the settlement, are going to fall under Section 106 scrutiny, and in order to concurrently resolve that, we have consulted with Commission Staff and the Advisory Council about proceeding to prepare a cultural resources management plan pursuant to the programmatic

14471
JWBloj

44

agreement that the Commission issued a few years ago.

We have been consulting with the State Historic Preservation Office and doing archeological surveys to see what we need to avoid or mitigate in order to resolve the other modification issues that will emanate from the settlement.

In connection with the cultural resources issues, there are several tribes who have a very significant cultural resource interest in the properties subsumed by our Project.

By all of these factors, we remain optimistic that we will resolve these matters. It's bringing them together on different avenues. We have engaged a physical model of the proposed fish passage facilities in order to prove that they are hydraulically feasible.

We have a \$100,000 study underway that has to be completed before we can also finish the fish passage. But nevertheless, we remain optimistic and we have been working closely at this point with the New York State DEC and the U.S. Fish and Wildlife Service and New York Rivers United to try to resolve the fisheries issues, and then separately with State SHPO and the National Park Service on the cultural issues.

MR. KATZ: Jerry, are the settlement talks, is the process of settlement talks with regard to School Street contingent on anything that's happening with Oswego, or are they proceeding on a separate track and are not waiting for anything with regard to the earlier project?

14471
JWBloj

45

MR. SABATTIS: At this point, they are proceeding on a separate track. The issues with the Oswego are not affecting the progress on the School Street.

MS. MILES: And, Jerry, do you have a schedule for completion of these settlement talks?

MR. SABATTIS: I knew you were going to ask that. It's difficult to give an answer to an exact schedule. I had indicated to Staff that it will be at least six months to bring home these diverse resource issues and the further evaluations that we are undertaking. The results of those have to be done before we can reach it, so that all I can say is at least six months.

MR. PAWLOWSKI: Thank you, Jerry. Thank you. Now we will be proceeding to the State of Vermont where we will be discussing three projects.

The first project on our list is the Carver Falls Project No. 11475. It is located on the Poultney River and the application was filed in 1994. The 1.85 megawatt project is unlicensed and operating.

Since the last workshop, the Water Quality Certificate Request has been withdrawn and refiled for the fourth time. Since the last workshop, the Applicant has met with the Vermont Agency of Natural Resources to discuss the issues of aesthetic flows in the bypass reach and flashboard design.

14471
JWBloj

46

The Applicant requested additional time from the VNAR to develop a counterproposal. We are awaiting a Water Quality Certificate from the State of Vermont.

CHAIRMAN WOOD: Is someone here from the Applicant or from the Agency?

MR. SCARZELLO: Yes, Mike Scarzello and Ken Pickton from Central Vermont Public Service. Good morning.

CHAIRMAN WOOD: Good morning. So where are we in your discussions with the VNAR on the issues Mark pointed out?

MR. SCARZELLO: Unfortunately, we've been delayed in achieving another meeting to try to close outstanding Project resource issues that were mentioned, namely, determination of appropriate aesthetic flow releases and any potential alternatives to flashboard designs on the Vermont section of the spillway.

We have three projects pending in Vermont and in a moment, we'll be talking about the status of the larger and longer case, the Lamoille Project, which has taken significant time and resource from both ANR staff and CVPS staff.

Carver Falls and Silver Lake have languished since then. We are attempting right now to set up a January 2004 meeting with ANR to pick back up where we left off.

CHAIRMAN WOOD: It's unlicensed, so does anyone really have an incentive to get it finished?

MR. CUETO: The State of Vermont does, and also the

14471
JWBloj

47

State of New York. This is Jeff Cueto from the Agency of Natural Resources in Vermont.

And I think what you heard from Mike Scarzello is pretty much on target. We have been spending a lot of time over the last year on the Lamoille Project, but I think we're in a situation where with the Applicant's cooperation, we'll be moving into high gear with respect to the Silver Lake Project and Carver Falls.

CHAIRMAN WOOD: I know we're going to get to Lamoille in a moment, but is that kind of the one you're dealing with first and then these other two fall out after that? Or are you trying to parallel track them at all?

MR. SABATTIS: If I might, it's Mike Scarzello. I would venture to say that the timeframe on Lamoille is now taking hold and that's on the fast track. We'll be speaking to that in a minute, in detail.

And, again, we're hoping to pick back up in January and bring resource issues to bear on both Carver Falls and Silver Lake.

CHAIRMAN WOOD: And are the issues -- are there broader issues than the aesthetic ones that Mark pointed out, that the State is concerned about with this Project?

MR. CUETO: This is Jeff Cueto. I think the aesthetics issues at the site is probably the paramount issue and the one that is most difficult to deal with. I think, you

14471
JWBloj

48

know, Mike mentioned the flashboard issue and aesthetics issues. I don't think that there are any other significant issues at this facility.

We actually have drafted a Water Quality Certification and so it's just a matter of tweaking it, if you will, if we can reach agreement on these issues.

MR. SABATTIS: I'll remind the Commission that a few years prior, we were ordered under a FERC Finding of Jurisdiction to apply for an original license at this facility. This is prior to my joining the Company.

The Company was successful because it's a single powerhouse discharging on a stream that is bordered by both Vermont and New York State, with the powerhouse solely in New York State. The Company applied to New York and was successful in reaching a settlement a Water Quality Certification a few years earlier.

Vermont subsequently appealed jurisdiction and the FERC agreed that because there is the potential to discharge flow releases over the Vermont section of the spillway, we ought to be going and getting a Water Quality Certification from Vermont.

MR. PAWLOWSKI: Are there any other questions or comments related to Carver Falls?

(No response.)

MR. PAWLOWSKI: The next project that we will be

14471
JWBloj

49

discussing is the Silver Lake Project No. 11748, a 2.2 megawatt project located on Sucker Brook. The application was filed in 1994 and it is also an unlicensed operating project.

Since the last workshop, the Applicant met with the Vermont Agency of Natural Resources at the Project site in the Spring of 2002. Based on that site visit and subsequent written report, the VNAR concluded that a reservoir management proposal was needed to be developed by the Applicant.

And, again, we are awaiting a Water Quality Certification.

MR. SABATTIS: Again, Mike Scarzello. This is the first time I'm aware that CVPS has been noticed that we need to yet again develop a new proposal for any operating scheme associated with the Sugar Hill Reservoir.

We've had a few meetings prior with the Agency. We had not heard any response from the Agency on outstanding proposals to date. Agency staff and biologists conducted the benthic survey.

We have the report, and, again, this is the first time I've been made aware of that this Company is expected to change its operating proposal for the reservoir.

It's an outstanding issue to be resolved. This is a very small, mountainous, 15-square mile area drainage high-head, two-megawatt Project that is largely marginally economic, based on the latest agency proposal that we know of.

14471
JWBloj

50

There's a number of outstanding resource issues besides Sugar Hill Reservoir that require resolution, including flow releases at the so-called diversion dam. I don't know exactly how we will do it and the amount of flow, a smelt spawning window of discharges from the tail race into the Lake Dunmore region and the water level management associated with another piece of Project infrastructure, Silver Lake, itself.

MR. PAWLOWSKI: Is there any timetable for completion of that?

MR. SCARZELLO: We withdrew and reapplied for our 401 in May, 2003. We've been working in tandem with the ANR on outstanding issues with Carver Falls and Silver Lake together.

Our hope is that we can pick up on the crux of the issues at Silver Lake when we meet in January with ANR staff. And we hope to resolve these timely, before the May deadline of next year.

MR. PAWLOWSKI: Jeff Cueto, do we appear to be on track thus far for issuance of a Water Quality Certificate by May of 2004?

MR. CUETO: I thought we were on track two years ago when we had the first workshop. I guess I remain somewhat optimistic.

We do have resolve, you know, especially the issue related to Sugar Hill Reservoir. I would note that we did put a Water Quality Certificate on public notice back in 1998, and at

14471
JWBloj

51

that time, had agreed with the utility on a different way of operating Sugar Hill Reservoir.

There were some public objections to that management proposal, and CV withdrew their application, so we didn't act on the Water Quality Certificate Request. And since 1998, this has been the central issue, and I thought we were reasonably clear, especially with the results of the benthic study that was done in 2002, that we needed a new management proposal for Sugar Hill Reservoir.

So, hopefully we can finish this by May.

MR. PAWLOWSKI: Is there anything the Commission Staff can do to assist?

MR. CUETO: Well, we're trying to set up this meeting for later this month and depending on the results of the meeting, there may be -- we may ask for assistance.

I would say why don't we see if we can work things out in the next month and we'll consider whether we need some assistance.

MR. PAWLOWSKI: Thank you.

MR. SCARZELLO: I would concur. This is CDPF.

MR. PAWLOWSKI: Thank you, we stand ready. The last project in the State of Vermont is the Lamoille Project No. 2205. It is a 16.9 megawatt project located on the Lamoille River.

The application was filed in 1987. Since the last

14471
JWBloj

52

workshop, the Applicant has filed a settlement agreement in July of 2003. Notice was issued by Staff on August 13, 2003, with a comment due date of September 2, 2003.

The U.S. Fish and Wildlife Service filed comments in support of the settlement agreement. What remains is the settlement agreement requires the Applicant to seek approval to recover the cost of the settlement agreement's measures from the ratepayers.

The Vermont Agency of Natural Resources will issue a Water Quality Certificate after the Vermont Public Service Board approves the settlement.

CHAIRMAN WOOD: Do we have any idea if that's docketed at the Public Service Board?

MR. CUETO: The Public Service Board actually has a prehearing scheduled for, I believe it's the 22nd of this month. I'd also note that --

MR. KATZ: Excuse me a second. Could you please identify yourself again for the Court Reporter?

MR. CUETO: Sure, this is Jeff Cueto from Vermont ANR.

So, we have a prehearing. It will certainly be tight in terms of completing the Public Service Board proceeding by the one-year deadline. We actually did put the Water Quality Certificate on notice back in July, and that triggered, under the settlement, a 90-day period in which CV had to file

14471
JWBloj

53

petitions with the Public Service Board.

So the 401 is off of notice. After the Public Service Board reaches its decision, which hopefully will be within the one-year timeframe for the 401, and we can act on the 401 and things will be pretty much in order.

MR. DICKSON: This is Ken Dickson. I'm an inhouse attorney with Central Vermont Public Service. Just to elaborate a little bit on what Mr. Cueto has said, the Public Service Board has set for prehearing, this docket on December 22nd.

At that time we anticipate that the Public Service Board will establish a schedule for the docket, which will provide an opportunity for intervention, and also set a schedule for the other parties, including the Agency of Natural Resources and Department of Public Service to file testimony in support of the settlement, and, in particular, the State's interests in certain aspects of the settlement.

We anticipate that the Vermont Natural Resources Council, the Town of Milton and Trout Unlimited, the other signatories to the settlement agreement, will certainly wish to participate in the case and may wish to file testimony as well.

It is possible that there may be other intervenors in the case that may either support or not support the settlement and will wish to file testimony in the case.

The Public Service Board has no statutory requirement to act within a certain period of time, but we have indicated in

14471
JWBloj

54

our filing of October 29th that the timeframe under the Water Quality Act is that one year, but we can't predict at this time, how quickly the Public Service Board would act on the petition.

CHAIRMAN WOOD: Well, it is the second oldest docket here at the Commission. The first one we'll take up from California is the oldest, but is there any role we could play in urging that those issues be flanged up and resolved, or do you think it's on acceptable track?

MR. DICKSON: I would say right now that it's on an acceptable track. We would likely know more, once the schedule has been set -- this is Ken Dickson, again, by the way -- once the schedule has been set and to determine if there are any intervenors that are going to come into the case and oppose the settlement.

Obviously, any opposition to a settlement, you know, raises issues for the regulators to consider. My advice would then be to let's wait and see where the case seems to go, and also if the Public Service Board itself raises particular issues.

CHAIRMAN WOOD: Okay. Could you let us know or let staff know how that goes, just so we can hear as soon as possible, what's going on there?

MR. SCARZELLO: Sure. This is Mike Scarzello. I have alerted, I believe, the Project Manager, Tom Dean, earlier this week, to some of the similar information just relayed to

14471
JWBloj

55

you. Ken or I would be happy to keep the communication open with them.

CHAIRMAN WOOD: Thank you.

MR. KATZ: Mr. Chairman, that concludes our morning portion. If it's acceptable to you and Commissioner Kelliher, we can begin at 11:30, or would you like a slightly longer break?

MR. LOWRY: Mr. Chairman, if I could interrupt, please, this is Kelly Lowry. I'm representing Trout Unlimited and the Vermont Natural Resources Council, both in the Lamoille case and in the Citizens Utility Company case, Project No. 2306, which was originally on the Notice for this teleconference -- excuse me, for this workshop.

I presume that the Commission has removed it from the slate of discussion today because the Commission issued a license on November 21st, after having received an indication from the Applicant that the State issued a Water Quality Certificate.

If I may just make a comment about that particular facility, is that acceptable to the Commission?

CHAIRMAN WOOD: Yes, please, go ahead.

MR. KATZ: So long as it does not get into substance, yes.

MR. LOWRY: No, it's a procedural issue. MR.

KATZ: Certainly.

14471
JWBloj

56

MR. LOWRY: We have -- this is an old project as well, and I can understand the Commission's interest in issuing the license and moving forward. However, I would note that the 401 Certificate that the Commission relied upon for issuance of the license is still being litigated.

We have currently pending, a motion to alter the decision in the event that the State Board that hears these appeals elects not to modify that 401 Certificate. I anticipate that we will take that appeal to the Vermont Supreme Court.

Alternatively, if the license is amended in some way that's unacceptable to the utility, I also expect that they will take the appeal to the Supreme Court, so that presents the possibility for the license -- or for the 401 Certificate that the Commission has currently incorporated into its license, to be changed materially.

In the event that that happens, I'm not sure what the Commission wishes to do about that. There does remain the possibility to stay the effectiveness of the license at the Supreme Court level, if the appeal is taken, which presents very interesting and complicated issues of state and federal law.

I'm not sure how that would be addressed at the time. I'm raising it for the Commission to see what the Commission feels about that.

MR. KATZ: Mr. Chairman, I would just note that when appeals are taken of various mandatory license conditions,

14471
JWBloj

57

including those presented, or internal appeals of federal agency conditions, as well as 401s, if a court or other authority changes that condition or mandatory authority, we change the license accordingly, so we are familiar with that type of concern and we deal with it accordingly.

MR. LOWRY: Fair enough. That's what I expected the Commission would do. I wanted to raise that argument, and I will probably be filing on behalf of Vermont Natural Resources Council and Trout Unlimited, written comments to that effect.

I simply wanted to put it on the record to preserve the issue, if nothing else, and to make sure that the Commission's understanding was consistent with my own.

CHAIRMAN WOOD: Thank you, Mr. Lowry, I appreciate it.

MR. KATZ: That is helpful in terms of preserving the issue, to make sure you file something in the relevant docket. That's the only way you can do that.

MR. LOWRY: I will, thank you.

MR. KATZ: Okay, we'll take a seven-minute break at this point and be right back with California.

(Recess.)

14471
JWBloj

58

MR. KATZ: Ladies and gentlemen out there in the crowd, we are back, and, Miles, we know who you are. Would folks please take their seats?

(Pause.)

We are back and ready to start the West Coast portion of our swing through hydroland. For those -- hello? For those who were not there for the first session, please give your name and organizational affiliation each and every time you speak, because we have a Court Reporter who is trying to take down everyone's breathless verbiage, and she has a lot of trouble doing that if she doesn't know who you are.

For the second part of our program, Nick Jayjack is going to take us through the West Coast. Nick?

MR. JAYJACK: Great, thanks, John. Chairman Wood, Commissioner Kelliher, we're going to dive right into California and first talk about the oldest case we have here, and that case is Escondido. It's a 1.64 megawatt facility and it's located on the San Luis Rey River not too far from San Diego, California.

I'm going to go into a little bit of history about this project, because I think it will better facilitate some discussion. I'll be brief.

The application for a new license for the Project was actually filed in 1971 and later amended in 1975. In 1979, the Commission actually issued a license for the Project, however, the Supreme Court vacated the license in 1984 and it was

14471
JWBloj

59

remanded back to the Commission for further consideration, and it was with particular regards to outstanding water rights issues.

And then in 1988, Congress enacted the San Luis Rey Indian Water Rights Settlement Act, which, among other things, requires any new license for the Project to include a settlement agreement that addresses all water rights controversies, claims, and issues.

Now, on this past October 10th, numerous parties in the proceeding, including local water districts and bands of the Mission Indian Tribe and the Department of Interior, executed about 50 agreements related to the allocation and delivery of water from the Colorado River.

However, three of those agreements directly apply to the Escondido Project. Now, generally speaking, those three agreements provide for the allocation and delivery of water to Escondido, and the Irrigation District and the Bands.

That's just part of the implementation of the Act that Congress enacted, the San Luis Rey Water Rights Act.

Now, in a letter filed by the City of Escondido two days ago, they stressed that the three agreements do not comprise the comprehensive agreement that was specified by Congress in the Act, but rather those three agreements are components of such a comprehensive agreement.

Now, Escondido, in their letter, estimates that the

14471
JWBloj

60

full agreement, that full comprehensive agreement, would probably not be reached until 2006.

Is somebody here from the City of Escondido? I thought I saw Greg here before. Hi, Greg.

I'm wondering if you could shed a little light on how you came across that date of 2006 for completing the settlement talks?

MR. OTTINGER: I will try to do so. One of the things that former Governor Davis and the California Legislature did get together on was the appropriation of \$200 million to line the All American Canal and the Coachella Branch of the All American Canal, which led to the -- will lead to the creation of what water lawyers call supplemental water, and what the legislation refers to as supplemental water, 16,000 acre feet of which will go to the parties as part of this settlement.

Now that that has been accomplished, the tough work starts, and that is the negotiation of the final agreement that will cover who gets what, when they get it, and where they get it, and how much of it they get.

The "who" is the City of Escondido, the Vista Irrigation District, and the LaJolla, Rincon, San Pasqual, Palma, and Paolo Bands of Mission Indians, as well as the Department of the Interior.

The "what" is the 16,000 acre feet of supplemental water, plus the existing local water within the San Luis Rey

14471
JWBloj

61

River watershed. And then, as I say, who gets how much of each of those things, when they get it, where they get it, how they share it, and so forth, is what the parties still need to address.

Now, they have accelerated their negotiating process. They met a couple of times last week. Escondido, in addition, has been meeting with FEMA, because part of the Project was burned within the last couple of months by the fires in Southern California, the wooden flumes, anything that was flammable, was burned as the fire swept across the conduit area.

The results of those discussions and the amount of money that may be available, may allow some of the Project to be put underground, which also may have to be thrown in the hopper. But to answer the question that you asked, how did we come up with a date of April of 2006, that is the date at which the supplemental water will begin to become available from the lining of the Coachella Branch of the All American Canal.

So the parties have set that internally as their drop-dead date for having everything in place, if at all possible. As I say, they've accelerated their negotiating schedule to ensure that they can meet that date.

I fear that means you'll be seeing me for the next two years, Mr. Chairman.

CHAIRMAN WOOD: I'm okay with that.

(Laughter.)

14471
JWBloj

62

CHAIRMAN WOOD: I just -- I mean, it's a 1.64 megawatt dam, and I just -- I don't know, just kind of when I look at -- the State of Kentucky approved a 15000 megawatt coal-fired plant. I know there are a lot of people in California that care a lot about clean air and renewables, and yet we've got here something that probably when the Beatles were still together, was filed here.

And is there something -- I mean, what does it take for people to, now that the three agreements have been signed, what does it take to just get it all figured out and get it moving forward?

MR. OTTINGER: Well, the agreements are just for the transportation of the water, to get it to the place where they decide who is going to use it, when and where.

It is only really an insignificant amount of power, but this project is not about the power; it's about the water. This is San Diego County where water is more valuable than gold.

CHAIRMAN WOOD: Does the statute specifically link the resolution of that issue to the issuance of a certificate or license by us?

MR. OTTINGER: The statute says that any license issued by you has to reflect the terms of the settlement agreement that the parties are now trying to reach.

CHAIRMAN WOOD: Okay, so there is a direct link there.

14471
JWBloj

63

MR. OTTINGER: And, in addition, as the Staff mentioned, the thing has been up and down from the Supreme Court. During that time, we had the Settlement Act legislation. We've also had modifications to the Federal Power Act.

Your Staff has been very helpful and I'm sure will continue to be helpful, because at some point we will ask to want to meet with them and see if perhaps someone on your staff will stick his or her neck out and help us with some guidance as to how all these changes that have taken place since the original application was filed, may fit together to see what has to be done yet.

CHAIRMAN WOOD: I swear, if you guys could just settle out how you divvy up the water, we'll figure that other stuff out in an afternoon, but just get it done.

(Laughter.)

CHAIRMAN WOOD: I've just -- Escondido has this wonderful -- I can't remember when we were out there when I was a kid. I have such a wonderful memory, but it's just been tarnished by this project being on my --

MR. OTTINGER: Oh, please, Mr. Chairman. We will do our best, and I will relay your concerns right away.

CHAIRMAN WOOD: Thank you. I have to go play an old Beatles CD in honor of this one, all right.

MR. JAYJACK: Just to quickly recap this project, the next action is the development of a comprehensive agreement, and

14471
JWBloj

64

we can move on from there.

CHAIRMAN WOOD: And that's the same one we're talking about for April of 06, right?

MR. OTTINGER: Yes.

CHAIRMAN WOOD: Okay.

MR. JAYJACK: Okay, our next project is the Lower Tule, which is a 2.5 megawatt facility which is owned and operated by Southern California Edison Company. And that Project is located on the middle fork of the Tule River in Central California.

The Project is also partially located in the Sequoia National Forest and the Giant Sequoia National Monument. The Project is new to this year's list.

A Draft Environmental Assessment was prepared cooperatively by Commission Staff and the U.S. Forest Service, and that was done in January of 2002, and that was followed by a Final Environmental Assessment in June, 2002.

The Fish and Wildlife Service filed their Biological Opinion on Federally Listed Species that are associated with the Project, in November of 2002.

Earlier this year, the California State Water Resources Control Board received additional info in support of their processing of Edison's Water Quality Certification Application.

The next step in the process is for the State to

14471
JWBloj

65

complete its Water Quality Certification decision and the due date on that is March of 2004.

Now, my question to the State of California, if they are present, either here in the audience or over the telephone, is March 2004 doable for completing that decision?

CHAIRMAN WOOD: Is there anyone here on this project or on the phone?

MR. MASCOLO: Nino Mascolo from Southern California Edison Company here. We have not had contact with the State Water Resources Control Board in about a month and a half. But prior to that point in time, they did say that they had all of the information that they needed to process the 401 Water Quality Certificate application, and that they anticipated being able to do so prior to March 2004.

Given recent budgetary problems that the State of California is now experiencing, we are unaware if that timeline has been compromised or not.

MR. JAYJACK: Thank you. Okay, with that, we're finished with California and we're going to move over to Idaho. We're going to talk about five projects in Southern Idaho which are located in the Snake River Basin.

Four of those projects are actually grouped together are better known as the Four Mid-Snake Projects. And we've also grouped in C. J. Strike, and they are situated on the Snake River in south central and southwestern Idaho.

14471
JWBloj

66

The Projects are owned and operated by Idaho Power Company, and together they have a combined capacity of 252 megawatts.

Now, C.J. Strike is new to this year's list, and since the last workshop, formal environmental -- I'm sorry, formal ESA consultation between FERC Staff and the U.S. Fish and Wildlife Service has continued, and settlement talks between Idaho Power Company and the U.S. Fish and Wildlife Service has begun in order to settle issues that are, in turn, related to Project operation and associated effects on federally listed snail species.

These activities have taken place in order to facilitate the Fish and Wildlife Service's completion of biological opinions for the projects, which happen to be the remaining actions for these projects.

Most recently, we sent a response letter to the Fish and Wildlife Service, stating that we would not take action on the pending license applications prior to a 90-day period that was specified by the Fish and Wildlife Service as the time that they needed to complete settlement negotiations and actually file the biological opinions.

That 90-day period ends on February 2nd of 2004, which is when we are expecting to receive the biological opinions.

I'd like to direct a question to the Fish and

14471
JWBloj

67

Wildlife Service and/or Idaho Power, and I'm just wondering, is the February 2nd, 2004 date, in your view, doable for actually completing this process, the settlement and in the case of the Fish and Wildlife Service, the biological opinions?

MS. BECK-HAAS: This is Allison Beck-Haas with Fish and Wildlife Service in Boise. I'll field that question first and if John Prescott wants to add anything, that's great.

But that due date is doable if everything goes ideally. The things that have to take place between now and then are completion of the settlement agreement, submission to the Commission of the settlement agreement, incorporation of the settlement agreement into the license, and then a request from the FERC to the Service to consult on a revised action.

We don't anticipate that it would take more than 30 days to turn the biological opinion around from the time of that request, but when that request arises is going to dictate whether we are able to meet that February 2 date.

And we're doing everything we can to meet that date. It's in our best interest, as well as the Company's, to meet that date.

MR. JAYJACK: Thanks, Allison. Could you quickly repeat your name and affiliation for the Court Reporter?

MS. BECK-HAAS: Yes, the first name is Allison, second name is Beck, last name is Haas, H-A-A-S. I'm with the Fish and Wildlife Service at the Snake River Office in Boise.

14471
JWBloj

68

MR. PRESCOTT: Mr. Chairman, I'm John Prescott with Idaho Power Company, and, see, on this particular project, we have actually five projects that are going to end up in two licenses, so there is an attempt here to do some consolidation within one drainage, and, in this case, one river.

I would say, just to add on to what Allison from U.S. Fish and Wildlife just stated: We intend to file that settlement agreement by the second of January 2004, and then follow on with the biological opinion after that.

It's our hope that this settlement agreement would protect the threatened species that are there and allow us the operating flexibility that we enjoy at that project today. In particular, the peaking is the value and the peaking happens at Lower Salmon Bliss and the Strike Projects.

CHAIRMAN WOOD: I'm asking a question to our Staff: What internally is the process then for what we need to do prior to -- I think Allison mentioned that the trigger was filing a request to consult with them on the SA issues. What do we need to do here, once we receive their settlement after the New Year?

MR. JAYJACK: Once we receive the settlement, the first thing we'll have to do is actually notice the settlement, and there will be -- I believe it's a 20-day comment period, and then there will be an additional ten days for responses to any comments received on the settlement.

Now once that period ends, I think I heard Allison

14471
JWBloj

69

state that we would prepare a letter back to the Fish and Wildlife Service in order to -- I'm not -- could you repeat, Allison? I was understanding you to say that we would need to re-initiate?

MS. BECK-HAAS: Yes. We, the Service, and the Power Company, met in August. The Commission agreed to hold the consultation in abeyance, which is not a technical term of art for consultation, but basically they will hold off on completing the biological opinion.

We need to be informed by the FERC of the changes to the action we originally consulted on, and we can complete a biological opinion on an action that is changed from the original proposal to reflect incorporation of the settlement agreement. And so that we can render a new opinion without the FERC letting us know that the action is different than the original request, and that would come in the form of a written request for biological opinion, and then that written request specifying how the action has changed from the original request.

MR. KATZ: Mr. Chairman, apparently our Staff would have to determine whether the information submitted with the settlement was sufficient to provide the information necessary for the environmental analysis of the proposal.

CHAIRMAN WOOD: Mr. Prescott, is your -- do you envision that there will be actual, in-the-settlement-agreed-to language that would amend the license itself, or does our Staff

14471
JWBloj

70

have to translate your settlement agreement into licensing language?

MR. PRESCOTT: Mr. Chairman, I'm unaware of that procedure. Perhaps Mark Robinson could help.

MR. ROBINSON: Allison, let me propose an alternative and see if this satisfies your requirements: What if we went ahead and sent you a letter now, knowing that you're in discussions concerning the settlement, and ask you to consider the results of that settlement as a modification of the application, so that you could go ahead and start your process for giving us your biological opinion at the most appropriate time, as opposed to just waiting for us to sort of transfer back to you, what you already have? Would that work for you?

MS. BECK-HAAS: Well, I can let you know. We're proceeding with preparing the opinion anyway. I mean, we, based -- you know, as we negotiate the settlement agreement, we are, as we speak, working to amend the opinion.

The importance of the request for consultation on a new action is for it to be clear for our purposes, what the intent of the Commission is in terms of incorporation of any license articles that would reflect and implement the settlement agreement.

The draft settlement agreement includes suggested language for those license articles, and I would expect that it may be appropriate to have some discussion before we submit that

14471
JWBloj

71

settlement agreement to assure that the language that we use in the draft license articles meets the needs of the Commission Staff.

We can do that to speed the process, but we want to make sure that everybody knows that we are proceeding with development of documents on the hope that what the FERC proposes in terms of the license, reflects the settlement agreement.

So we should be able to turn that opinion around in very good order, once we receive that request.

MR. KATZ: That all makes sense, and certainly coordinating to the extent possible, is something that we will do and that we work with the Service with, too. I just want to make sure that it's clear to everybody that we can't prejudge what the Commission itself would choose to do in terms of incorporating the settlement or provisions thereof into a license, and so what would go forward to the Service would be Commission Staff's recommendations, but not the Commission's opinion.

MS. BECK-HAAS: Yes, that's understood by the Service. That's the mode of operation. The fine legal point here is that we, the Service, as the consulting agency, can't define the action. The FERC, as the action agency, needs to define the action.

Although it's well known, what -- among the players, what we believe the action will look like, from a legal and

14471
JWBloj

72

administrative record point of view, we need something in our records from the FERC, describing what they believe the action will be, pending approval by the Commission.

MR. ROBINSON: This is Mark Robinson again. We'll work with you on that to identify what that earliest point is, and make sure you have the necessary document from the Commission to allow you to move forward.

MS. BECK-HAAS: Thank you, Mark.

CHAIRMAN WOOD: Thank you all on that one.

MR. JAYJACK: Okay, with that, we'll move to Oregon and we'll talk about one project there. It's located in the northern part of the State and it's called Powerdale.

Powerdale is a six megawatt project and it's located on the Hood River, which is a tributary to the Columbia River. Powerdale is one of a handful of projects where an application to, in essence, surrender an existing license was filed during an ongoing proceeding on relicensing the very same project.

Relicense application for the Project was filed with the Commission in February of 1998, and Commission Staff later completed its final EA, Environmental Assessment, in 2001, and then awaited completion of biological opinions for the project.

On June 16, 2003, PacifiCorp filed a settlement agreement specifying interim project operations for a time after which the project would be removed, and that removal would take place in 2012.

14471
JWBloj

73

Accompanying the settlement was a request to hold the relicense application in abeyance. Staff completed and issued its environmental assessment for the dam removal proposal, one week ago.

The next steps are for Staff to request initiation of the SA consultation and for the State of Oregon to complete processing of PacifiCorp's application for Water Quality Certification.

Also, comments on the EA are due in January.

CHAIRMAN WOOD: What does it take for us to initiate the ESA consultation?

MR. JAYJACK: Essentially what we would do is, we would send a letter requesting -- send a letter to the Services, requesting the initiation, and we would include a biological assessment.

CHAIRMAN WOOD: On the biological assessment?

MR. JAYJACK: We have and are working on the letter right now.

CHAIRMAN WOOD: Okay. So that's going out, what, next week, this week?

MR. JAYJACK: Probably early next week.

CHAIRMAN WOOD: Okay. Are there any issues from anybody on the phone call here, any issues that are outstanding with regard to the State's WQC? I want to hear from the Applicant.

14471
JWBloj

74

MS. FLORA: Jeri Flora with Pacificorp. We actually -- there aren't any issues. We expect to have a 401 issued within the next couple or three months, a little bit sooner than what your schedule indicates, in fact.

CHAIRMAN WOOD: Good. And then the ESA consultations with our staff here? Nick, what are we thinking? It will be with what?

MR. JAYJACK: NOAA Fisheries and the Fish and Wildlife Service. There's a 135-day period for those formal consultations to take place.

CHAIRMAN WOOD: Okay. And then the EA that we did on this, do we have like to adversely affect a couple of species here or fish?

MR. JAYJACK: In actuality, we didn't make that call in the EA, and chose, instead, to make the call when we formally initiate the ESA consultation, so there's no language in the EA that is consistent with what you said is in the ESA, but that will go out in the letter.

CHAIRMAN WOOD: Okay, so they will advise us if there are species issues then. Okay, so we'll see how that goes then and follow it from there. Okay.

MR. JAYJACK: Okay, moving north to Washington, we have two projects there that are on this year's list, the first of which is the Condit Project. Condit is a 14.7 megawatt project and is located in the White Salmon River, which is a

14471
JWBloj

75

tributary to the Columbia River like Powerdale.

Similar to Powerdale, Pacificorp filed the settlement agreement for dam removal on Condit, specifying interim project operations, after which the project would be removed, and in this case, the removal would begin in the Fall of 2006 and be completed in late 2007.

Once again, similar to Powerdale, the settlement agreement was filed while there was a pending application to relicense the project. A final Supplemental EIS for the settlement dam removal proposal was completed by Staff in 2002.

We are currently awaiting the Washington Department of Ecology's decision on Pacificorp's application for Water Quality Certification, and that decision is due in May of 2004. We are also awaiting a final biological opinion from NOAA Fisheries, which we expect by March of 2004.

I have a question for Ecology related to the 401. I was wondering if somebody is there from the Department of Ecology who can give us an update and let us know if there is any hangups in any way with the processing of the 401.

MS. ZIMM: This is Polly Zimm from the Washington State Department of Ecology. Our current schedule would not have us completing the 401 Water Quality Certification in May of 04.

We expect at this point that it would be later in the year. We do hope to have it done by the end of calendar year

14471
JWBloj

76

04, hope to have good news to report at next year's workshop.

Part of the reason we're not going to be able to make the May 04 schedule is because we still have to complete our own state environmental review process and we are continuing to work with Pacificorp on other state and federal agencies to get that additional environmental review worked out. And we hope to get that restarted early in 04, and that process will take up to nine months or so, and so the 401 certification can't -- that decision can't be issued until after the environmental review work is complete.

MR. JAYJACK: How about someone here from NOAA Fisheries that can give us an update on the processing of the biological opinion?

MR. JOSEPH: Burt Joseph with NOAA Fisheries. We're on track. I'm told from our staff out in Portland that the biological opinion is about 40 percent complete, and we fully expect to meet our timeline of March of 2004 to have it completed.

We've shared or we've been asked to share a draft with Pacificorp, which we will do for their comments. Our understanding is that the Commission has not requested an opportunity to review the draft.

In any event, like I said, with or without comments, we can meet that March timeline. We've redirected staff to make it a priority at this point.

14471
JWBloj

77

MR. JAYJACK: Thank you.

CHAIRMAN WOOD: Good.

MR. JAYJACK: I'll just quickly recap what we heard.

As far as the Water Quality Certificate goes, it likely won't be completed by May of 2004, however, it's looking real good that it will be completed by the end of the calendar year 2004. With the buyout, we're expecting it in March of 2004, and that appears to be doable for the filing.

With that, we'll move to Snoqualimie Falls. The Snoqualimie Falls Project is located on the Snoqualimie River in Snoqualimie, Washington. There's been quite a bit of activity since the last workshop, including NOAA Fisheries concurrence with Staff's finding of a not like to adversely affect call on Puget Sound Chinook Salmon, thereby completing our Endangered Species Act responsibilities.

Second, there was issuance of Water Quality Certification by the Washington State Department of Ecology, and, third, there was issuance of a shoreline permit by the City of Snoqualimie, which thereby paved the way for Ecology to make a determination of consistency with the State's Coastal Zone Management Program, so the CZMP work is now completed. That occurred just last month.

Two days ago, we received supplemental information from Puget Sound Energy related to the license application. Included with the filing and of special note is Puget's request

14471
JWBloj

78

that the Commission delay issuance of a license for the project until all appeals of the Water Quality Certification have been resolved.

And what's happened is that the Snoqualimie Tribe, the Snoqualimie People have filed an appeal with the State of Washington, challenging the Water Quality Certification. However, to my knowledge, that certification has yet to be stayed, if it ever will be.

Also of note is that Puget's request to meet with Commission Staff directly in January in a conference-type setting, with invites to all participants, and what Puget would do would be to present the new material contained in the filing and bring Staff up to speed as to what has transpired with the recent certifications.

In any event, all necessary regulatory processes outside of the Commission are now complete, and so the next step is to issue our decision on the application by way of an Order.

CHAIRMAN WOOD: What advantage to the Applicant does deferring until all appeals of the Water Quality Certificate by the State have been resolved? This is related -- kind of the flip side of the issue that was raised this morning on an issue in Maine, I believe it was, or Vermont.

MR. KATZ: Mr. Chairman, I don't know if there is anyone out there for the Applicant who could speak to that. It would be conjecture on our part. I suppose certainty might be

14471
JWBloj

79

an answer, that they would know exactly what their certification was going to look like, once the appeals were completed, but as I said, that's just a guess on my part.

MS. KRUEGER: This Pamela Krueger here on behalf of Puget Sound Energy today, Mr. Chairman. And the concern, of course, is that with the Water Quality Certification having been appealed by the Tribe that has obviously been a long-time opponent of the Project, and the number of issues that are raised in that appeal, there is certainly uncertainty as to the outcome.

And as long as there is uncertainty as to the outcome, that means that not only are we talking about what you typically see in Water Quality Certification as far as the requirements are, but there is also the issue at Snoqualmie Falls of aesthetic flows over the falls as a component of that Water Quality Certification, and any revisions to the flow regime or other aspects of water quality obviously affect not only the potential terms and conditions of the license, you would assume, but also the project economics and so forth.

And I guess part of this also is that we don't think that this is going to be a significant delay, because a hearing has already been set before the Pollution Control Hearings Board, which is the administrative body here that will hear this appeal for May of 2004.

I'd be happy to answer any other questions about kind

14471
JWBloj

80

of where the State process goes with the Water Quality Certification appeal, but that's the primary reason for looking for a slight delay in the Commission's decision.

And, you know, there is obviously with the passage of time, some need for Commission Staff to get back up to speed on all of the particulars of the filing and the application, and that was part of the reason that we submitted the materials that we did, was really to provide the update and to be able to engage with Commission Staff directly, is our hope in January, so that we can really make this a fairly efficient process and really have the only one pending issue with the Water Quality Cert. Thank you.

CHAIRMAN WOOD: Thank you.

MR. JAYJACK: Okay, we're going to move on to Arizona. That particular project is the Childs Irving Project and it's located on Fossil Creek in central Arizona. The Project is located on federal lands.

Like with Powerdale and Condit, settlement for dam removal filed by the Applicant for the Project -- and the Applicant in this case is Arizona Public Service Company -- and that settlement was filed while license application was pending before the Commission.

Since the last workshop, we issued a Draft Environmental Assessment for the removal proposal, and that took place in June, and we plan to issue the Final next month. The

14471
JWBloj

81

State of Arizona issued Water Quality Certification for the Project in November.

Formal consultation with the Fish and Wildlife Service will commence upon issuance of the final EA.

Now, to summarize, the next steps are for Staff to issue the FEA and commence formal consultation with the Fish and Wildlife Service, which will take place in January.

CHAIRMAN WOOD: And that process, again, is the 135-day period?

MR. JAYJACK: Yes, sir, that's correct.

CHAIRMAN WOOD: Does anybody on the phone want to speak to anything on this license?

MR. FALLON: Andrew Fallon from American Rivers. American Rivers is among the signatories to the settlement agreement that led to the process of surrender and decommissioning of the Childs Irving Project, and we were happy to see the State issue the 401 Certification just the other day, consistent with the settlement agreement.

The ESA consultation is something that needs to be concluded in a timely manner, and so we are certainly going to work with other parties, including the Fish and Wildlife Service, to see that that gets done on time. The settlement agreement does call for removal of the -- initiation of the removal process, restoration of instream flows, in particular, by the end of next calendar year, December 31st of 2004.

14471
JWBloj

82

That's an important date for all of the settling parties, and it's one that we want to make sure is met, so getting the ESA consultation complete and then the Commission's final action, subsequent to that, is quite important to us.

CHAIRMAN WOOD: Thank you.

MR. KATZ: Mr. Chairman, that concludes our presentations, and I think we should note the hard work of particularly OEP staff in preparing this, Mark Pawlowski and Nick Jayjack, who were our presenters, Ken Hogan, Susan Sing and others who helped with the technical aspects. There were a lot of OEP staff who gathered the information and the updates and tried to get things rolling and the Orders issued so that the list would not be any longer than it is.

CHAIRMAN WOOD: I appreciate all the hard work, and look forward to a shorter list, and, simultaneously, not exhausted Staff at the same time. I appreciate the hard work of people outside the Agency as well to facilitate this.

Consider us engaged and interested. We're going to watch these things closely and continue to do what we can to help. If there are parties along the way, either Applicants or other parties involved in these licenses, that feel that some involvement, whether informal or formal, of the Commission, its Staff or other people that we can perhaps draw into the proceeding to assist in its resolution, please consider this an open invitation from all of us here to continue to work

14471
JWBloj

83

collaboratively with all the Applicants on these at times very difficult issues.

But every issue is meant to be resolved. It just may not be resolved in the way everybody likes it, but they can get resolved, so that's what we want to do. Thanks for your hard work; we appreciate it.

Meeting adjourned.

(Whereupon, at 12:20 p.m., the workshop was adjourned.)